FIFTY-SECOND YEAR

SATURDAY, JUNE 14, 1902. SALT LAKE CITY, UTAH.

NUMBER 178

# E JURY FINDS PETER MORTENSEN "GUI

Peter Mortensen is guilty of "murder in the first degree." That is the verdict sa handed to Judge Morse by H. T. sertliff, who had been chosen foreen or the other, after the verdict had Armstrong, read the verdict which the outset followed the stereotyped

form, and then continued: "We, the jurors in the above entitled case, find the defendant guilty of murder in the first degree as charged in the infor-

Attorney C. B. Stewart then requested that the jury be polled individually, which was done. "Is this your verdict?" was asked of each juror as his name was called. "It is," was the answer of the entire 12 men.

TO BE SENTENCED JULY 5. It was a noticeable fact that the prisoner was perfectly unaffected by the announcement. Not a muscle moved, not a nerve twitched. The court then thanked and discharged the

jury and fixed Saturday, July 5, at 10 a. m. as time for pronouncing sen-

JURY OUT 3 HOURS 26 MINUTES.

At 2 o'clock this afternoon the jury returned to the county building from the Kenyon hotel, where it had lunch in charge of Deputies Cummings, Arnup, Alkire and Bull. As the jurors went trooping across the corridor to the room set apart for them they were eyed with an interest that was most intense, and various were the speculations indulged in by the crooning crowds as to whether or not a verdict had been arrived at. When the jury room was reached they stepped within and boited

diligent watch from without, In this room were all of the exhibits introduced in the trial, such as the clothing of Hay, the murdered man, including the overcoat, that was found to have been pulled up over his head at the time his body was exhumed from its rude grave in the pasture. They also had the fruit jar that was supposed to have contained a part of the money, the Cannon check for \$258, the shovel which Mortensen was alleged to have dug the grave with. The one notable exhibit that the jury did not have in the room was the settee upon which Mortensen said he sat with Hay when

which was subsequently missing.

The great crowd that was in court when the judge delivered his charge remained there during the whole noon recess, that is, a goodly part of it did. There were many who did not leave their seats even for a minute, and when the jury did not file into court promptly on its return from lunch loud was the wall of disappointment that went up in all directions. Yet it was an orderly crowd withal, probably on account of the predominance of women that were in it. Much of conversation was carried on with bated breath and in a tone so low that only

speaking could hear what was said. Every one seemed to realize to the fullest and profoundest degree that a human life was at stake-that it was in fact trembling in the balance. Meanwhile Judge Morse sat in his library next to the court chamber ready to assume his place upon the bench on the assume his place upon the bench on the announcement being made by one of the deputies that the jury was ready to return the verdict that was expected to make Mortensen a free man or turn him over to law to explate the crime with which he has been charged for months past and which has shocked the community as no other murder ever committed in the state of Utah.

At 2:32 Deputy Sheriff Arthur Cummings, white and trembling, went to mings, white and trembling, went to

the jury was ready to report. At 8:50 the prisoner came into the court room followed by his counsel. Mortensen's

## The Finish of a Notorious Case

Stale's Attorney Dennis Eichnor Names the Fifty-five Strong Links in the Perfect Chain of Evidence That He Has Wound Around Peter Mortensen-July Took the Case Before Noon Today.

Joseph Smith, who is one of the Mortensen jurors and who has a habit of taking ocular note of everybody and everything seeable at every time of the day, was the only one among the jurors who looked at the efendant as they marched out of the courtroom this morning with the fate of Peter Mortensen in their keeping. The fact was noted by the specators and different constructions of significance were placed upon the

There was an immense crowd present and the corridors were filled ith people possessing that indefinable expectation of something to see that always seems to hold humanity to a spot of interest.

Especiancy, grave, quiet and of deep concernment, was in all about the art room; yet no excitement seemed to find a place there. All eyes were ow turned to news from the jury room, with not even the vaguest kind f an impression as to how long the news must be awaited.

#### MEN WHO DECIDED MORTENSEN'S FATE.

Joseph Smith, Merchant, Granger, Samuel Bringhurst, Farmer, Taylorsville. H. D. Shurtliff, Farmer, Mill Creek. S. R. Le Roy, Railroadman, Salt Lake, Henry Tribe, Salesman, Salt Lake. Michael Kopp, Manufacturer, Salt Lake Wm. A. Bills, Farmer, South Jordan. John T. Alexander, Farmer, Salt Lake. Chas. H. Ingham, Jr., Sheepman, Salt Lake, Alma H. Rock, Farmer, East Jordan. John B. Dailey, Mining Man, Salt Lake.

#### Last Evening's Close.

Yesterday afternoon District Attor-Eichnor argued for the state until ree minutes after five o'clock, roughout his long argument, Mr. short did not attempt oratory, or affect the sympathetic, but with the blunt logic and plain words he sought shatter the argument of the defense, i forge a chain of circumstantial dence soild and sound. "My friend Mr. Stewart," said Mr.

Sichnor, "challenged me to explain the afference between a note that was secured by mortgage and a note that was not secured by mortgage and a note that was not secured by mortgage. Well, here it is In the form of the note itself there is no difference, but there is a vast difference, but there is a vast difference in the contraction of the mortgage. rence in the way the note is marked; if there should be any attempt on e part of the person to whom the ige was given, to foreclose, then have the note, if it is marked paid, show that it was paid. There is the ference, so that is disposed of for the

EICHNOR GETS SARCASTIC.

Now then, about the subject of revedon. Who brought it out? Mr. Barard Stewart, that brave man who pict told you how brave he was to hig it out. Now, why did he bring it May it not have been for the pu jury who, perchance, do not believe the principle of revelation. It maters not whether I believe in it. They sked me why I placed Mr. Sharp on he stand. I will tell you a little law."

Barnard Stewart objected to Mr. Ichnor explaining. chnor explaining any law, but Judge orse quietly said that the district attree had that right. Mr. Eichnor en said that it was held by all autorities ritles on law that where a person is harged with a crime, where he hears be charge and has a chance to deny it. and does not deny it, it is held a cir-imstance against him." When Mr. harp climbed into the patrol ragon. w he said. 'He murdered you for a sece of paper representing \$3,800. You dead body of his son-in-Mn't run away, but he murdered you.' hat did Peter Mortensen do, but hang s head and make no reply? When r. Sharp charged him again and again ith the crime he did not deny it. And hen this brave knight of the law, Mr. my it. He could not deny it because knew he was guilty! That's why I it Mr. Sharp on the stand. If my lend was such a brave man why did not cross such a brave man why did cross-examine Charles and Rich-When they gave such testimony again . why did they not cross-examine and try to show the fact, if that the Watkinses had offerest in the case? They cenharies Watkins because he comply with the request of Paensen and swear to a at he loaned him from \$1.000 Gentlemen, they told the ow then as to the finances. y did the defense so studiously id mention of the Cannon check. nnon check was part of the \$3,800.

4 yet when he said that he had the

chard Watkins, They

on Tuesday night. Why, of course called. He wanted that receipt. That's why he called. They said I had Mrs. Hay's sisters-in-law here for effect. The thought never entered my heart. You did not know who they were.

A REASONABLE DOUBT.

Now gentlemen, if you find this defendant not guilty, when you go out of here and you meet Mrs. Hay, take her by the hand and say to her 'We had a reasonable doubt that Peter Mortensen murdered your husband.' Lay your hands upon the heads of those three little fatherless children and say, We had a reasonable doubt that Peter Mortensen murdered your father,' go to the grave in the lonely field and place your hand upon that mound and say. We had a reasonable doubt that Peter Mortensen murdered you.' Do that if you can, gentlemen,

Mr. Eichnor called attention to the statement of Mr. Stewart that the prosecution did not put the wife of Henry Mortensen nor the wife of the defendant upon the stand. That would have been fatal error, and if the defendant was convicted, the supreme court would reverse the judgment. As to the hypoand himself to you as a hero, this thetical case of Mr. Alexander finding that knight, this great Napoleon of the a dead man, Mr. Eichnor said if such a thing should happen, the gentleman would soon show to his friends and neighbors where he got the money." He would say, gentlemen go there, and there and there, and you will learn where I got the money to pay him with. He would not close his mouth after "I will explain when the proper time comes, and then let his attorneys try to explain for him.

ROBBERY THEORY.

The robbery theory advanced by the defense was shattered by the statement that had anyone overheard the conversation about the money in the office of the Pacific Lumber company. the robbers would have heard that the money was to be paid IN THE MORN-ING, and not that night. Supposing Hay was going home when he left Mor-tensen's. Then Mortensen's statement that Hay was going to Romney's would not be true, would it? The same ser-pent that invelgled Hay to go to Peter Morteusen's that night, inveigled him down that track. Mr. Morton testified that Mortensen told him that he had arranged for Jimmy TO COME OVER AND GET THE MONEY THAT the said to him, 'Mortensen did not hy it. He could not deny it because Mortensen to induce Hay to come over and get the money. Mrs. Hay testified that when she went to Mortensen and rapped on the door after about ten minutes she heard an inside door OPEN AND CLOSE. If the igh not turned on why did he open and close that inside door? Gentlemen, it was done to SHUT OFF ANY COM-MUNICATION. I know not who was in the house. I care not. As to the financial statement, if you find anything else than we have presented here, you will have to go into the realms of imagination. You observed how carefully the defense followed up the accounts and checked them up Elchnor, will you please show

to this jury that Mortensen did not have the money?" asked B. J. Stewek on his person, and it was not beed and I the ach of December, and Yes, we have shown it to a mathematical certainty." was the reply.
"We don't convict upon one link, but
we put them all together and we have
a chain of steel." of Mortensen calling at Sharp's

FIFTY-FIVE LINKS.

Mr. Eichnors Chain of Evidence Against Mortensen.

Against Mortensen.

Peter A. Mortensen, uncle of Peter Mortensen, and brother of the latter's father, came down from Ogden this morning to be present at the close of the trial of the accused. He said he had no idea the trial would be over so soon and was surprised when he learned that it was about to go to the jury. When the accused came into court this morning he greeted warmly, his uncle and other relatives present. He appeared very confident and calm, until Mr. Eichnor began his final argument, when the old familiar frown appeared on his face and he sat staring at the prosecutor with eyes wide open. At 9 o'clock the room was haif filled with spectators, and by the time the minutes were read, the best of attention, and as he began to connect the links of evidence against the defendant, the interest of the jury and everybody in the court room was intense. Following is Mr. Eichnor had the defendant, the interest of the jury and everybody in the court room was intense. Following is Mr. Eichnor's argument:

"Gentiemen of the jury, I was speaking yesterday of the contention of counsel for defendant that the accused might have had the money from other sources than have been mentioned here. When Peter Mortensen was arrested on December the 18th, he toid Chief Hilton.

When Peter Mortensen was arrested on December the 18th, he told Chief Hilton, or he enumerated to him where he got the money which he claimed to have the money which he claimed to have paid to James R. Hay. We have taken those accounts as he has given them, and we have proved that he did not pay to Hay the Cannon check although he told Hilton that that was part of the \$3,800. He had it on his person at the time. If he had realized money from any other sources he would have told it. He knew he was to be charged with murder, and if he could he would soon have shown where he got the money. murder, and if he could he would soon have shown where he got the money. You take the amount he enumerated to Hilton and add to that the amount he wanted to get from the Watkins and you have about \$3,900. Now I think the attempt to prove he got the money from any other sources is futile. It clearly shows that we have taken the right track. When you discuss this matter in the jury room, consider, ask yourselyes how long it would take you to explain how you paid the money and explain how you paid the money and where you got it."

Mr. Stewart objected to ask: necessary to prove he did not have the money, would you not have called in every man in the state of Utah? Ought you not do so?"

Mr. Eichnor—"Yes, if it was necessary, but it isn't. We have proved he did not have the money."

As to the character of the defendant, Mr. Eichnor dismissed that subject with the statement that he could not attack the character unless it was put in issue.

that have a prior claim shall be preserved. Peter Mortensen never could have wiped out that mortgage by the bankruptcy isw. The gentlemen wont deny that, they are too well versed in the law. If I were to erect a house, say for \$12,000, and Mr. Stewart was the contractor, and you gentlemen of the jury were to furnish material for that house to the amount of \$1,000 each, the result is if he don't pay you, you have the right to place a lien on that house within 60 dys after the time the material is furnished. Mr. Romney has a lien right and how could Peter Mortensen wipe out that indebtedness? If Peter Mortensen took the bankruptcy set the Peacific Lumber company made repeated demands upon Peter Mortensen for money on the account that Peter Mortensen was owing the company. Mr. Peter Mortensen took the bankruptcy act, the Pacific Lumber company would have been protected by lien, but here is the point: If he had taken that act, he would have been branded as a thief."

Counsel for defense kept up a stream

Counsel for defense kept up a stream of interruptions, to ask questions, but Mr. Elehnor took it good naturedly and told them to "fire away" and he answered the questions.

"Why, Mr. Romney stated on the stand that he had liens on the house, and on various buildings, and these gentlemen sit here and they know that I am telling the absolute truth. They say that witnesses contradicted themselves. Oh, no, they wanted to find out where Peter Mortensen got that money. There is an old saying in law that cunning is crooked wickedness and the very points they wish to establish.

question was answered.

"Peter Mortensen is about 68 inches high. That fence is 50 inches high, and he could have thrown "Now as to the plea that he could have got out of his debts by taking the bankruptcy act, as mentioned by C.
B. Stewart. Now, let's see if our friends did not jump over the law, in their zeal: At first it seemed reasonable. What is the bankruptcy law? It is especially provided that all debts that have a prior claim shall be prescribed by taking the provided that all debts that have a prior claim shall be prescribed by putting all the links together.

For some time the manager of the Pacific Lumber company made repeated demands upon Peter Mortensen for money on the account that Peter Mortensen was owing the company, Mr. Romney told him to pay part if he could not raise the whole amount. Peter Mortensen made no payments whatever during this time that Mr. Romney asked him time and again for part payment, if he could not make a full settlement. Finally Mr. Romney will him, "We (meaning the Pacific Lumber company) must have the money, as we company) must have the money, as we need it." Saturday, before the fatal Monday. Peter Mortensen told Mr. Romney that he thought he would be able to fix up with the company on Monday next. SECOND

The fact that Peter Mortensen called at the office of the Pacific Lumber company at 6 o'clock in the evening, Monday, Dec. 16, 1901, the same night that James R. Hay was murdered, afthat cunning is crooked wickedness and the very points they wish to establish, lead to the discovery of the crime." Mr. Stewart interrupted to ask:

"Please tell this jury how one man could put that limp body over the fence without tearing his clothes or getting blood on them."

Mr. Eichnor—I will answer that in my own way. After this trial is over, you I that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered, after business hours, and there in the office of the Pacific Lumber company he suggested and asked that James R. Hay was murdered. own way. After this trial is over, you come down there with me and I will impelled him to take the money to the soon show you how quickly I can Pacific Lumber company himself and throw your body over the fence and I | paid it to the company, and said:

wont tear your clothes or scratch you cither. This was followed by a hearty laugh and the court rapped for order and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room.

Mr. Stewart had no reply to make, The great the court room.

Mr. Stewart had no reply to make, The great the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and threatened to clear the court room.

Mr. Stewart had no reply to make, The great the court room and the court room.

Mr. Stewart had no reply to make, The great the court room and the court room.

Mr. Stewart had no reply to make the great the court room and the court room.

Mr. Stewart had no reply to make the great the court room and the cour THIRD.

At the office of the Pacific Lumber At the office of the Pacific Lumber company Mortensen, after the amount of the indebtedness had been figured up, gave an order on Mrs. Brixen for \$107. This act was the part of a carefully conceived plot which led up to the murder of James R. Hay. The state has shown, beyond all possible doubt, that Mortensen had in his possession \$390 in cash after the alleged payment of the \$3,800 to James R. Hay. Now that it has been proved that he had \$350, after the alleged payment of the \$3.00 to James R. that it has been proved that he had \$390, after the alleged payment of the \$3,800, why did he give an order on Mrs. Brixen for \$107? If he had the \$3,800 in his house, then he would have had \$4,190, and there would have been no necessity for giving any order on Mrs. Brixen or anybody else.

It was Peter Mortensen who asked James R. Hay (in the office of the Pacific Lumber company that Monday evening when James R. Hay was murdered,) to make out a receipt for the amount, and he (Mortensen) told Mr. Hay to bring the receipt with him when he came for the money. Peter Mortensen did not then and there offer to pay any money.

The purpose of the suggestion on the part of Mortensen about the receipt in the light of subsequent events is ob-

Peter Mortensen was in the office of the Pacific Lumber company when James R. Hay put the receipt, which he had written a short time before, with the note attached, into his pocket. This pocket was turned inside out when James R. Hay was taken from the grave.

SIXTH. George E. Romney had most impli-citly instructed James R. Hay on Mon-day evening, at the office of the Pa-cific Lumber company, in the presence and hearing of Peter Mortensen, that when Mortensen paid him (Hay) the money in the morning to be sure and cancel the note, which was secured by a mortgage, so that Peter Mortensen would be protected in case the com pany overlooked the cancelling of the mortgage on record. The note when

and there is no scintilla of evidence to contradict this absolute fact.

EIGHTH. How could Peter Mortensen secure the receipt from James R. Hay without paying him the money? What person in this world would murder James R.

Hay for the receipt, except the defend-The fact that Peter Mortensen had

TENTH.

The fact, that the note attached to the The fact, that the note attached to the receipt was uncancelled when found in the possession of Peter Mortensen, and that George E. Romney had instructed Mr. Hay in the presence of Mortensen that when he (Hay) would receive the money from Mortensen on Tuesday morning, Dec. 17, the note should be cancelled by James R. Hay.

The evidence proves beyond all rea conable doubt that James R. Hay was not murdered for money or any valuable personal property, as his wife's gold watch and chain were found upon him when he was taken out of the grave, and that he was solely murdered for the receipt of \$3,800 from the Pacific Lumber company, and which receipt could benefit no other person in this world than Peter Mortensen.

minutes, and he went out to return nevermore.

THIRTEENTH.

When Mrs. Hay called at Peter Mor-

SIXTEENTH.

The fact that when Mrs. Hay called

James R. Hay had told his wife that he would return from Peter Morten-sen's in a few minutes. The statement of Peter Mortensen the following that after he had paid James R. Hay the money, and Mr. Hay said he would take the money to Mr. Romney that night, the distance from Peter Mortensen's house to James R. Hay's house is about 200 feet. If Mr. Hay had left. Mortensen's house with the intention of taking the money to Mr. Romney that night, the natural instincts of Mr. Hay would have conveiled him. Hay would have compelled him to re-turn to his wife and tell her about the

The Salt Lake Street Railway com-

NINETEENTH.

Peter Mortensen told George E. Rom ney on Tuesday morning, the day after the murder, that James R. Hay came the murder, that James R. Hay came to his house the evening before and said: "I thought Ernest would be worried about the money, so I thought I would come over and get the money, and take it up town." Wednesday he and take it up town." Wednesday he and take it up town." Wednesday he told R. J. Jessup, a Deseret News reporter, that when Mr. Hay came to his house, that Mr. Hay said Mr. Romney had realized his had notified him to collect the mone and surrender the receipt. Mortense emphasized this statement by saying "I don't know how Romney had sen word to him. Mr. Jessup wrote down the interview and then read it to Mortensen, who said it was correct. Mr. Moreton visited the defendant at the hall. They discussed the inter-as published in the Deseret News (which had been written by R. J. Jes-sup). Peter Mortensen said it was a mistake about Mr. Hay coming to his

followed by his counsel. Mortensen's face was paic at first, but he soon recovered himself and when the verdict was read he was among the coolest persons in the whole assemblage.

When filing in, the jury was headed by Mr. Henry Tribe, and to one with eyes it could be very readily guessed that the verdict which they were about to announce would be one of guilty. At first there was considerable shuffling of feet and whispering when the jurymen took their seats and it became necessary for Judge Morse to call

came necessary for Judge Morse to call for order. As the reading began, how-ever, there was the allence of death in the courtroom until the last word had been uttered.

We have proved beyond all reasonable doubt that the defendant did not have the \$3,800 in his possession which he claimed he paid to James R. Hay,

TWENTIETH.

The admission of Peter Mortensen to William A. Moreton that he (Mortensen) had arranged with James R. Hay that Monday evening that Mr. Hay should come to his (Mortensen's) house that evening. This was dented by Peter Mortensen on Tuesday, the 17th of December, and he insisted that he had no knowledge of James R. Hay coming to his house Monday evening, December 16, until Mr. Hay called.

TWENTY-FIRST.

Peter Mortensen pointed out to the officers and other persons the settee on which he claimed he paid James R. Hay the money. This small settee is here in evidence. The prosecution has also proved that there were chairs, table and other furniture in the room. Why would Hay and Mortensen take such an uncomfortable position while counting the money?

Peter Mortensen told Royal B. Young on Wednesday morning, December 19, 1901, that James R. Hay carried the money off in his pockets. Mr. Young said to him: "You dont mean to say that Mr. Hay carried \$3,800 in gold in his pockets? Peter Mortensen replied: "Well, he had part of it in a sack.

TWENTY-THIRD.

TWENTY-FOURTH. Peter Mortensen stated to James and George A. Sheets that he had kept the money—the \$3,800—in gold partly in a sack and partly lose, on the east well of his cellar. Attanwards he told

lar gold pieces. The evidence shows that one jar holds at least \$4,000 in 20-dollar gold pieces.

TWENTY-SIXTH.

One of the fruit jars holds about \$4,000 in twenty dollar gold pieces. If Peter Mortensen's statements were true that he had three fruit jars full of twenty dollar gold pieces, he would have had in his possession on Monday evening, December 16, 1901, over \$12,000 in gold.

The absurd statement of Peter Mor-

tensen that he kept \$3,800 in gold in the basement of his house. The basement at the time that Mortensen claimed the money was there, had four open spaces for windows-the windows having been put in after Hay had been murdered. TWENTY-NINTH.

tion. Gentlemen of the jury, the only explanation in this case of the alleged financial transaction between Peter Mortensen and James R. Hay is the argument of barnard J. Stewart and C. B. Stewart and C. B. Stewart.

When Frank Torgenson had discovered the mound of earth which after-wards proved to be the grave of James a shovel. Mortensen said, "I have only one shovel; it is a short handled, round-nosed sharel." The prosecution has proved the he had a "squarenosed" or rquare pointed" shovel in his possession. Mr. Torgenson testifies beyond a cavil of a doubt that the snow about the grave showed distinctly that a square pointed shovel had been used. This fact explains why Feter Mortensen was so careful in telling Mr. Torgensen that he had only a "round nosed" shovel. He knew that the other shovel had been cleaned, and Torgenson would discover immediately by fitting the shovel in the marks, that

### JUDGE MORSE'S CHARGE TO THE JURY

Gentlemen of the Jury: 1. The defendant, Peter Mortensen, is accused by the information of the district attorney of this district with the crime of murder in the first degree. The information charges in substance that Peter Mortensen on the 16th day of December, A. D. 1901, at Salt Lake county State of Utah, unlawfully, wilfully, feloniously, deliberately, premeditatedly of his malice aforethought. and with the specific intent to take the life of James R. Hay, did kill and murder said James R. Hay, by shooting

him with a pistol. To this charge the defendant pleads that he is not guilty, and you are instructed that such plea puts in issue every essential fact constituting the crime of murder, and casts upon the state the burden of proving every such fact constituting the crime charged, your satisfaction beyond a reasonable

2. Murder as defined by the statute of this state is the unlawful killing of a human being with malice afore-thought. Such malice may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears, or when the circumstances attending the killing show an abandoned or malig-

nant heart. Every murder, says the statute, perpetrated by poison, lying in wait, or any other kind of wilful, deliberate, malicious and premeditated killing, or committed in the perpetration of, or attempt to perpetrate any arson, rape, burglary or robbery, or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed; or perpetrated by an act greatly dangerous to the lives of others, and evincing a depraved mind, regardless of human life; is murder in the

While, however, the law requires that the killing in order to constitute mur-der in the first degree, must be perpetrated "from a premeditated design" with a specific intent to take life, still it does not require that such premedi-tated design shall exist in the mind of the perpetrator for any fixed period of time before the doing of the act which onstitutes the crime; if there was such esign and determination to kill deliberately formed in the mind at any moment before the fatal act was done,

4. Murder in the second degree is the unlawful killing of a human being with malice, but without deliberation or premeditation. The term malice, in law, means a wicked intention of the mind, a wish to vex. annoy, trouble, or

injure another person.

5. Manslaughter is the unlawful killing of a human being without malice. It is of two kinds, voluntary and involuntary. Voluntary manslaughter is where the killing is upon a sudden quarrel or heat of passion. I do not

as alleged in the information is an es-sential element of the charge against the defendant; so also are the charges stated in the information; First, that the killing occurred in Salt Lake County, State of Utah; Second, that the killing was unlawful; Third, that the killing was wilful; Fourth, that the killing was felonious; Fifth, that the killing was deliberate; Sixth, that the killing was with malice aforethought on the part of the defendant; Seventh, that

the killing was premeditated by the de-fendant; Eighth, that the killing was the result of a specific intention on the part of the defendant to take life; and Ninth, that the life so intended to be taken was the life of the person named in the information. It is not enough that one or any part of these charges be proven beyond a reasonable do but it is necessary in order to justify a erdict of guilty of murder in the egree, that each and every one of the allegations of the information unmerated, be proven to the satisfaction of the entire jury and beyond a

7. You are instructed that a mere reponderance of the evidence in favor of the prosecution is not sufficient to convict the defendant. Before he can be convicted each juror must be con-vinced of his guilt beyond a reasonable doubt, and unless each juror has an abiding conviction to a moral certainty of the truth of the charge against the

defendant, he cannot be convicted. You are further instructed that the offenses of murder in the second degree and voluntary manslaughter, are necessarily included in the offense which is charged in this information, and under out law a defendant may be onvieted of either of such other of enses so included; and if in this case t shall appear to you that the defendant has committed a public offense, and there is in your minds a reasonable doubt of which of two or more degrees he is guilty, you can convict him of the

lowest of such degrees only.

9. A reasonable doubt is a fair doubt growing out of the evidence or lack of evidence in the case. It is not dack of syldence in the case. It is not a mere imaginary, captious or possible doubt, but a fair doubt, based upon reason and common sense. It is such a doubt as may leave your minds, after careful examination of all the evience in the case in that condition that ou cannot say that you have an abiding conviction to a moral certainty of the truth of the charge here made against the defendant. A doubt to justify an acquittal must be reasonable and arise from a candid and impartial consideration of all the evidence admitted in the case, and it must be such a doubt as would cause a reasonable prudent and considerate man to hesi-tate and pause before noting in the

graver and more important affairs of 10. If, after you have considered all the evidence in this case fairly and impartially, and after having consulted with each other as to what your verdict should be, any juror entertains a reasonable doubt of the defendant's guilt, then you cannot find him guilty. Each juror, under his oath, must your lifested, by circumstantial restaurance of the consideration nor in any manner be influenced by the fact that the defendant and id not testify in this case.

15. In every crime or public offense there must exist a union or co-operation of act and intent or criminal negligence. The intent or intention is manifested as the consideration nor in any manner be influenced by the fact that the defendant and identification in this case. the evidence in this case fairly and impartially, and after having consulted the law relating to involuntary manslaughter, because as to this offense there is no evidence in this case.

6. The burden of proof rests upon the state to prove all the essential acts

guilt, then you cannot find him guilty. Each juror, under his oath, must vote according to his convictions, and the reasonable doubt with which he has to do, is the doubt in his own mind. But this does not mean that each firm.

constituting the offense charged to your satisfaction beyond a reasonable doubt. The manner and cause of death, and respect, if a reasonable doubt remains in his mind, he should vote not suilty.

11. Circumstantial evidence in crim-

inal cases is competent, and is of the same force and effect as any other evidence, provided the facts and circumstances, when taken all together, are of such a character as to satisfy the minds of the jury beyond a reasonable doubt that the defendant is guilty. This kind of evidence is the proof of such facts and circumstances connected with or surrounding the perpetration of the crime charged, as tend to show the guilt or innocence of the person accused; and if these facts and circum stances, when considered all together are sufficient to satisfy the minds of the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize a conviction; but if such facts and circumstances, when considered all togeth-er, are capable of explanation upon any other reasonable hypothesis than that

the defendant is guilty, then such evidence will not warrant a conviction.

The prosecution claims that the evidence in this case is made up of a chain of circumstances and facts, or links. so connected together, that they lead up with all reasonable certainty to the defendant's guilt. I charge you that in order to convict the defendant upon this class of evidence, you must be satisfied beyond a reasonable doubt that each material fact or necessary link in the chain, has been proven; and if you have a reasonable doubt that any material fact or link constituting the chain of circumstances has been

en, then you should acquit the defendant. All presumptions of law, independent of evidence, are in favor of in-nocence, and a man is presumed to be innocent until he is proven guilty be-youd a reasonable doubt. This presumption attends a defendant at every step of the trial, and you are bound to presume him innocent until he is proven guilty beyond a reasonable doubt, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

18. If you believed from the evidence that the character of the defendant for peace and quiet was good, you should consider it as bearing upon the prob-ability as to whether he would, with such a character, be likely, without provocation, to do an unlawful act of violence. Evidence of good character is important, and in a doubtful case,

may turn the scale in the defendant's 14. Under the law of this state a defendant in a criminal case may, if he chooses to do so, testify in his own behalf, but if he does not offer himself as a witness, that fact shall not in any manner prejudice him nor be used against him on the trial, and you are Instructed that you must not take into consideration nor in any manner be in

gence. The intent or friendlen negli-ifested by circumstances of by circumstances connected offense, and the sound mind

into court. In this case it requires unanimous concurrence of all t 16. If you believe any witness has unanimous concurrence wilfully testified falsely as to any ma- jurors to find a verdict.

erty to disregard the whole or any part of the testimony of such witness, except as he may have been corroborat-ed by a credible witness or credible ev-

idence in the case.
17.—You are the exclusive judges of the facts proven, of the credibility of the witnesses of the weight and effect of the evidence, and of the inferences to be drawn threfrom; and in determining these matters you are to exercise your best judgment based upon your experience in life as business men, and your knowledge of the motives which influence persons in their statements. You have the right to take into consideration the conduct and manner of the witnesses while testifying before you; their intelligence and means of obser vation; their opportunities to know and capacity to remember and to state the facts to which they testify; their interest or lack of interest, if any has been shown, in the result of the trial: their prejudice or bias, if any has been shown: the state of mind of any witness at the time of the occurrence of the things about which he has testi-fied, in so far as the evidence enables you to judge it; and the probability or improbability of the truth of their statements, in view of all the other

In case there is a conflict in the tes timony of the witnesses, it is your duty to reconcile such conflict so far determine for yourselves where the ultimate truth of the case is.

18. It is your duty to consider the evidence all together fairly, impartially and conscientiously. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should not consider nor be influenced by any video. be influenced by any evidence offered but not admitted by the court, nor any evidence stricken out by the court. You should not consider nor be influenced by and rumor or expressions of opin-ion you may have heard or read out of court, nor by the fact, if you believe exists in favor of or against the de-fendant. You should not consider nor in anyway be influenced by the fact that the defendant's wife or any mem-bers of his family have or have not been present is court during this trial. You should not consider nor be influ-enced by any statements of course. enced by any statements of counsel as to what the evidence is unless they state it correctly, nor by any state-ments of counsel of facts not shown by the evidence.

19. Under the law of this state, the penalty for murder in the first degree 1, death, or upon the recommendation of the fury may be imprisonment at hard labor in the state prison for life; and if you should find the defendant guilty of murder in the first degree, you should then consider the question of making such recommendation, and it will be your duty to consider such question in the same manner as any other question submitted to you, giving to it your careful and conscientious make such recommendation, you will include it in your verdict.

20. When you retire to deliberate you should appoint one of your number foreman. Your verdict must be in writing, signed by your foreman, and when found, must be returned by you

the receipt in his possession which had been written out in the office of the Pacific Lumber company on Monday evening, Dec. 16, 1902, and was last seen in the possession of James R. Hay.

ELEVENTH.

TWELFTH. James R. Hay reached his home about 8:25 Monday evening, Dec. 16, 1901. That same evening be left his house at 8:45 to go to Peter Mortensen's house. Just before leaving he told his wife, I am going to Peter Mortensen's to collect some money, I will be back in a few

James R. Hay was last seen alive with Peter Mortensen, at Peter Mortensen's house on the fatal night, Mon-day, Dec. 16, 1901, where he had been FOURTEENTH.

At the time Mrs. Hay was standing on the porch of Peter Mortensen's house and waiting for him to respond to her shaking the door, and calling loudly for Mortensen, she heard the inside door open and close, and then Peter Mortensen opened the south side door? For no other purpose but to prevent any one else in the house from hearing what was about to trans-pire. He turned no lights on.

FIFTEENTH. tensen's house in the morning at a clock, Dec. 17, Peter Mortensen manifested his nervousness by rubbing his hands and speaking in a low tone. This conduct on the part of the defendant at that critical moment, is more eloquent than words.

at the house of Peter Morten clock in the morning Peter Mortense: did not offer to go in search of Mr. Hay whom he claimed he had paid the \$3,000 shows that he knew more than he expressed in words to Mrs. Hay. SEVENTEENTH.

contemplated trip, so that she would not have been alarmed about his av-

EIGHTEENTH

pany runs within 200 feet of Peter Mor-tensen's gate. The distance from Mortensen's gate, the distance from Mor-tensen's gate, (by way of the Rio Grande Western railway track) to the Waterloo line of the Salt Lake City Street Railway is 3,696 feet, 12 times the distance from Mortensen's house to the nearest street railway. It is too unreasonable for argument to suppose that James R. Hay would walk twothirds of a mile further to get a street within a stone's throw of Peter Mor

city hall. mistake about Mr. Hay coming to his Peter Mortensen's interest in the house without his (Mortensens) knowl. mound of dirt reported to him by Frank the

TWENTY-SECOND. Peter Mortensen told Royal B. Young

Peter Mortensen told George E. Romney on Tuesday morning, Dec. 17, 1902,
on the first day that Hay was missing,
that when he paid James R. Hay the
money on the setee, that Mr. Hay
put a lot of gold pieces into one trouser pocket until full, and then filled the
other. He filustrated Mr. Hay's action in this respect by putting his
hands into his own trouser pockets.

wall of his cellar. Afterwards he told Thomas Hilton and George A. Sheets that he had the money or the gold in two fruit jars. Even the second statement he changed. The next declaration of Peter Mortensen on the subject of this money was that he had the \$3,800 in three fruit jars, and that the three fruit jars were full of 20-dollar gold pieces. And the last statement about the money was that he had kept it in three jars in the cellar and one jar in the pantry. This-last statement was made to John B. Cummock?

TWENTY-FIFTH.

TWENTY-FIFTH. On Thursday, Dec. 19, 1901. Peter Mortensen told E. C. Penrose in the presence and hearing of George A. Sheets that he had three fruit jars full of 20-dollar gold pieces. He pointed out a jar, as one of the three similar jars, which jar alone holds more than \$3.800 in 20 dollar gold. \$3,800 in 20-dollar gold pieces. The tes-thmony of Joseph E. Caine, cashier of the Utah Commercial & Savinga Bank, shows absolutely that \$3,800 in 20-dollar gold pieces does not fill one of the three fruit jars which Peter Morten-sen claimed he had filled with 20-doi-

TWENTY-SEVENTH. There were little mounds of dirt, sand and dust, Wednesday, December 18, 1991, on the east wall of the cellar of Peter Mortensen's house where he claimed he had stored the \$3.800. dirt, sand or dust was disturbed in any manner, and no impression whatever of jars, sack or coin. Thomas H. Hilton, George A. Sheets and F. C. Loof. bourow viewed the exact spot in ques-

Peter Mortensen told William A. Moreton, as well as other persons, that at the proper time he would show that he had the money in his possession and that he would make an explana-

THIRTIETH.

similar shovel had been used in dig-

ging the grave.